

Filed 7/22/20 In re T.T. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re T.T. a Person Coming  
Under the Juvenile Court Law.

B298760

(Los Angeles County  
Super. Ct. Nos.  
19LJJP00091,  
19LJJP00091A )

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and  
Respondent,

v.

D.T.,

Defendant and  
Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Jessica A. Uzcategui, Judge. Affirmed.

Pamela Rae Tripp, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

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Father D.T. appeals from juvenile court orders establishing jurisdiction over his son, T., pursuant to Welfare and Institutions Code section 300.<sup>1</sup> Father contends that the juvenile court erred in exercising jurisdiction over the case and altering custody and visitation orders previously issued by the family law court. Alternatively, he argues there was insufficient evidence to establish that T. was at risk of harm. We affirm.

### **BACKGROUND**

#### ***Initial Referral, Investigation, and Family Court Proceedings***

Mother T.F. and father have one child together, T., born in 2014. Mother also has an older daughter, A., from a prior relationship.<sup>2</sup> Mother and father dated and lived together for approximately eight years; A. lived with them, along with T., once he was born.

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on December 16, 2018, when DCFS received a report of a domestic violence altercation between mother and father. The reporting party stated that mother and father started arguing over financial issues, then mother began hitting father on his back and head, causing redness to father's back. T. was in the home

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<sup>1</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup>Mother and A.'s biological father, M.C., are not parties to this appeal. A. is not a subject of this appeal.

and could hear the altercation, but did not see the physical assault.

According to the police report, officers responded to a domestic assault call on December 15, 2018. Father told the police he did not want to prosecute because he suspected mother was on methamphetamine. He also told the officers that there had been approximately five prior unreported incidents of domestic violence involving mother. T. told police that he heard mother and father arguing but went when father told him to; he did not see mother hit father. Father declined an emergency protective order or medical treatment.

A DCFS children's social worker (CSW) met with father, A., T., and paternal grandmother at father's home on December 18, 2018. Father reported that on the day of the incident, mother came to the home asking him for money. When he refused, she became enraged, called him names, and hit him on his arms and back at least 10 to 15 times. Mother then stopped, started crying, and apologized for hitting him. Afterward, she left in father's car. Father told police he did not want mother arrested and he believed she was under the influence of drugs or alcohol during the incident.

Father also told the CSW about past domestic violence incidents during which mother hit and slapped him, and threw things at him. He stated that the children had not witnessed any physical violence but had seen mother become enraged, call him names, and curse at him. He suspected mother had an alcohol problem, but also believed mother had started doing drugs. Father admitted he tried to hide mother's issues in the past but "can't do it anymore" because he was fearful mother would take A. somewhere unsafe.

Father reported mother had a long history of alcohol abuse and would stop drinking at times, but never for longer than a month. He told the CSW that he had retained an attorney and was seeking custody of the children and a restraining order against mother. He declined DCFS services, stating that mother needed help, but he and the children did not.

The CSW also spoke to A., who stated she had never seen mother or father hit anyone or use drugs. T. told the CSW that he had never seen mother or father hit anyone, but he had heard mother yelling at father and saying bad words. T. stated he felt safe with both parents but preferred to stay with father.

Paternal grandmother told the CSW that she suspected mother was drinking and using drugs and had lost a lot of weight. She reported that mother would pass out drunk in A.'s room. During the past few months, mother had been absent from the home and father had taken care of the children.

Father called the CSW on December 26, 2018 to report that the family court granted a restraining order protecting him, and gave him temporary custody of A. and T. He stated that mother had a monitored visit with the children, but stayed only 45 minutes and was mostly on her phone.

Father called the CSW again on December 31, 2018. He stated that mother was homeless and hanging around with drug dealers. He also reported learning from mother's friend that mother tried to drive drunk with the children in the car in the past, and said that he was afraid that mother would get custody of the children.

The CSW spoke with maternal grandmother on December 31, 2018, who said mother had been struggling with a drinking problem for the past eight or nine years and was verbally abusive

toward everyone. Maternal grandmother had witnessed mother throwing things at father and acting “very crazy” under the influence of alcohol. She also stated that mother did not care what she said in front of the children and she feared the children were not safe with mother.

The family court issued a custody/visitation order on January 8, 2019. The court awarded legal and primary physical custody of T. to father. The court ordered visitation twice per week for mother and T., with monitored visitation for the first six visits. A. was returned to mother’s custody. The court also issued a two-year restraining order protecting father and T. against mother.

After multiple contact attempts, the CSW spoke with mother on January 8, 2019. Mother admitted hitting father during the incident in December, explaining that she “lost control” because she needed money to get her own place. She stated she ended the relationship with father because he was verbally abusive to her. Mother admitted having problems with alcohol in the past, but denied drug use and claimed she was currently clean and sober. She denied doing anything to put the children at risk and denied any previous domestic violence.

Mother reported that she had found a new place to live and that the family court had returned A. to her custody. The CSW met with mother and A. at mother’s new home on January 8, 2019. Mother admitted drinking alcohol to cope with stress in the past, but denied drug use. A. told the CSW she was happy to be with mother, but wanted to be able to visit father and T. Mother tested negative for drugs and alcohol on January 9, 2019.

The CSW met with father on January 9. Father continued to express concern regarding A. living with mother and showed

the CSW videos of mother yelling and arguing in the home. Father stated he had seen cocaine in mother's purse, which she brought into the home and left where the children could access it.

DCFS also spoke with other family members. Paternal grandfather reported that mother had not been acting like herself for a long time. Mother's sister-in-law (SIL) stated she was very concerned at how mother was acting and mother appeared unstable. SIL told the CSW that mother was an alcoholic and an "angry drunk." SIL stated she had seen mother drive drunk at least five times and had also seen her punch and scream at father.

On January 24, both parents tested negative for drugs and alcohol. Mother told the CSW she was wrong for hitting father, but said that he had choked her in the past and she had to defend herself.

### ***Petition and Non-Detention Report***

DCFS filed a section 300 petition on February 8, 2019 regarding A. (then 12 years old) and T. (then five years old). The petition alleged that the parents' domestic violence, mother's substance abuse, and father's failure to protect placed the children at risk of harm within the meaning of section 300, subdivisions (a) and (b)(1). Specifically, paragraph a-1 alleged that mother and father had a history of engaging in violent altercations, including on December 15, 2018, when mother struck father's face and body while T. was present in the home. Additionally, the petition alleged that on prior occasions mother threw objects at father and father failed to protect T. Paragraph b-1 alleged that mother had a history of substance abuse, including methamphetamine and cocaine, and was a current abuser of alcohol, rendering her incapable of caring for or

supervising the children. Further, on prior occasions, mother was under the influence of alcohol while caring for the children. The petition also alleged that father knew of mother's substance abuse and failed to protect T. Paragraph b-2 restated the domestic violence allegations to support the claim of failure to protect under section 300, subdivision (b). The children were not detained; A. remained with mother and T. with father.

DCFS filed a "non-detained detention report," detailing the department's interviews with the family and other relatives. DCFS concluded that the risk to the children was high, noting that most of the family members reported concerns with each parent and detailed incidents that had not been reported to law enforcement, such as additional domestic violence and driving under the influence of drugs or alcohol. DCFS recommended further court supervision to ensure that mother and father followed through on the recommended services and continued to provide a safe environment for the children.

At the detention hearing on February 8, 2019, the court found there was a prima facie case for jurisdiction over the children pursuant to section 300. However, the court also found there were reasonable services available to prevent detention and therefore, the release of the children to the home of their parents would not be detrimental to the children's physical or emotional health. The court ordered A. to remain with mother's home as her primary residence, with unmonitored visitation for father three times per week.<sup>3</sup> The court ordered T. to remain with

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<sup>3</sup>The court found both father and M.C. to be presumed fathers for A. M.C. appeared through counsel in the proceedings, but he lived out of state and did not seek custody of A. All counsel agreed that A. had a strong relationship with father and

father's home as his primary residence, with visitation for mother in accordance with the existing family law order.

Mother's counsel asked the court to take jurisdiction over the family court case. She indicated that she planned to request at the adjudication hearing that the court modify the restraining order to remove T., in order to "allow the court to make orders as [it] sees fit with respect to current risk." Counsel for father and both children objected that it would be "premature" to remove T. from the restraining order, given his presence at the time of the incident. No objections were raised to the request that the court assume jurisdiction over the restraining order. Accordingly, the court stated it was taking jurisdiction over the restraining order and would "keep in place the orders made by the family law custody order."

### ***Jurisdiction and Disposition***

DCFS filed its jurisdiction/disposition report on March 22, 2019. In a March 18, 2019 interview with mother, she told the DCFS dependency investigator (DI) that she had never abused or neglected her children. She claimed the allegations about her were false and father had turned her friends and family against her. When she and father broke up, she allowed the children to stay with father because she did not have a stable place to live. Mother told the DI that between September and December, 2018, she visited the family home daily to ensure the children were cared for and help around the house. She stated that the altercation on December 15 occurred because father refused to pay her money he owed her.

Mother also told the DI about prior incidents with father, including an instance when she threw a cup of yogurt at the wall

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there were no objections to visitation.



and another when she got upset and “socked [father] in the arm.” She admitted drinking but claimed she never drank around the children. She stated that she last used cocaine in October 2018, because she had gone out and was “trying to cope with everything.” Mother claimed she no longer felt it necessary to drink because she was no longer dealing with the stress of her relationship with father. She reported that she was attending Narcotics Anonymous meetings and would do whatever was required to keep A. in her care and have more time with T.

DCFS interviewed father on March 20, 2019. He stated that mother moved out of the house in November 2018. Early on December 15, 2018, he woke up and realized mother was asleep in T.’s bed. Father stated that in the month leading up to the incident, mother would come to the home to visit the children “from time to time.” Father believed mother was under the influence at the time of the incident. He acknowledged there had been a lot of conflict with mother leading up to the incident, but claimed mother started the arguments when he asked her if she was okay. Father stated he often also asked mother other questions to make sure she was not taking the children somewhere unsafe. According to father, mother’s “anger levels with me were like off the roof,” and she did not care who heard or saw the altercations between them. Father reported mother had hit him and thrown items at him a few times in the past.

Father told the DI that after a few years with mother, he noticed she had a drinking problem. Mother would abstain from alcohol for several months at a time, but then have “a bad drunken episode” and throw things or start a fight. Father found a bag of cocaine in mother’s purse in October 2018. He also claimed to have received reports from several people that mother

was using cocaine or methamphetamine. He stated he was hesitant to seek custody of the children because he wanted to protect A. but was not her biological father. Father admitted putting a tracker on mother's car because he had suspicions that mother was hanging out with dangerous people and she was caring for T. while he was at work. Father told the DI that he had enrolled in a parenting program and a program for domestic violence victims, and was participating in individual counseling.

The DI also interviewed the children. A. stated that she considered father to be her "dad" and he had been her father figure since she was about four years old. T. stated that mother and father did not get along very well and that mother often yelled at father.

The report noted that mother had been having unmonitored visits with T. twice a week for about two months. Father had frequent visits with A. DCFS reported no concerns with the quality of the visitations.

DCFS assessed the risk level for the children being abused or neglected as "high" due to the domestic violence between the parents, mother's substance abuse, and father's history of failing to protect the children. DCFS expressed concern regarding the children's safety and well-being without supervision by the court and DCFS.

In an addendum filed April 8, 2019, DCFS reported that mother had four negative drug tests between January and March. DCFS also attached several documents from the family court proceeding, including a declaration by mother and several letters from family members supporting father's petition. In one of the letters, mother's cousin detailed mother's substance abuse issues, including that mother attempted to drive the children

several times while intoxicated.<sup>4</sup>

In another addendum filed May 2, 2019, DCFS reported that mother had enrolled in a 26-week domestic violence anger management program and had completed her intake for individual therapy. Mother also stated she had been attending Narcotics Anonymous meetings and had been consistently testing clean for drugs. Father was nearing completion of his parenting program and continued to attend the domestic violence for victims groups. DCFS also reported that mother continued to violate the restraining order by repeatedly sending father text messages and calling him.

At the adjudication and disposition hearing on May 2, 2019, father testified that he found cocaine in mother's purse in October 2018. When he confronted her, she said she was using with friends and would not do it again. Prior to that time, he was not aware of mother using any illicit substances, but he had seen mother drinking, sometimes getting drunk. In the past year, father stated that he had seen mother become combative after drinking, including in front of the children. At the time of the December 15, 2018 incident, mother had not lived with the family for over a month. Father testified that he awoke around 3:00 a.m. and discovered mother had let herself in because she still had a house key. Later that morning, they argued and mother began to hit him. When father realized that "things could have potentially got [*sic*] hostile," he sent T. upstairs.

Father also testified that prior to the December incident, there were a "few little altercations." He did not consider them to be domestic violence at the time, but he had since learned

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<sup>4</sup>The juvenile court took judicial notice of the family court documents for purposes of adjudication.

otherwise through his classes. Father expressed no concerns over mother's visitation with T., although he noted that at times T. seemed like he did not want to go.

Mother testified that she had stopped drinking alcohol completely a few weeks before, and was participating in 12-step meetings. She also stated that she only used cocaine once in the past year. She was enrolled in anger management and domestic violence classes, counseling, and was trying to find an available free parenting class. She stated that she texted father daily, but only regarding parenting issues.

The assigned DI also testified that mother had consistently tested clean since January 2019 and she had not observed any signs of mother being under the influence of drugs or alcohol. She noted statements by T. to DCFS in April that he did not feel comfortable visiting mother unless father was present, but she did not see any safety risk to increasing T.'s unmonitored time with mother as long as mother continued to abide by the court's orders. She recommended A. remain in mother's custody, as long as mother continued to test clean. The DI also stated that she thought returning T. to mother would be "premature," and she would like to see mother continue to participate in programs to address her drug and alcohol abuse, as well as monitoring to ensure mother continued to maintain her sobriety and appropriately care for T.

The court continued the hearing to June 12, 2019 for argument. At the continued hearing, mother's counsel stressed mother's diligence in attending classes, continuing to test clean, and safely caring for A. She requested that the court remove T. from the restraining order, as he was not involved in any domestic violence and the order restricted mother's visits with

the child. Mother's and father's counsel both urged the court to dismiss the petition because there was insufficient evidence of a risk of harm from ongoing domestic violence or substance abuse. Father's counsel also argued that father had shown he was capable of protecting T. from mother and therefore the court should dismiss the allegations involving father.

A.'s counsel asked the court to strike count a-1 and conform the remaining counts to the evidence. T.'s counsel asked the court to sustain both domestic violence counts (a-1 and b-2), given T.'s young age and the history of mother's "unchecked" anger and violent altercations, as well as the substance abuse count (b-1). She also asked the court to leave T. as a protected party on the restraining order. Counsel for DCFS asked the court to sustain the petition as alleged.

The court dismissed count a-1, finding that DCFS did not meet its burden to show that the children were "present and at substantial risk of serious injury during any of the altercations between the parents." The court sustained count b-2, based on evidence of the parents' history of conflict and physical altercations, including mother's admission that she struck father during the December incident and previously threw dishes when angry. However, the court struck the allegations in count b-2 regarding father's failure to protect the children from mother's violent conduct, finding that father "acted immediately and protectively and appropriately" in seeking the restraining order. The court sustained amended count b-1, finding sufficient evidence of a history of substance abuse by mother and that mother's alcohol "sobriety for a few weeks or a month or two at a time is [in]sufficient to say that there is no ongoing risk, no ongoing problem." The court further sustained the allegations in

count b-1 regarding father's failure to protect, finding that "father knew of mother's substance abuse and failed to take protective measures." The court noted father's testimony that he had seen mother consume alcohol in excess more than ten times, including when the children were present, as well as other evidence of mother's ongoing substance abuse problem.

The court declared A. and T. dependents of the court and ordered them released to the homes of both parents. The court ordered family maintenance services including counseling and a substance abuse program for mother. The court also modified the restraining order to remove T. as a protected party, reasoning that it was "inconsistent to have an order releasing [T.] to both parents and yet have a restraining order preventing mother from having contact with T[.]," and further noting that the restraining order already allowed unmonitored visitation between mother and T. The court also added an exception to the restraining order to allow mother and father to participate in conjoint counseling. The court ordered the parties to mediation to work out the terms of visitation and custody. Father timely appealed.

### **DISCUSSION**

Father argues that the juvenile court erred in assuming jurisdiction over the matter and modifying the prior family law orders. Alternatively, he contends that even if the juvenile court properly exercised jurisdiction, the jurisdictional finding that he failed to protect T. from mother's substance abuse was not supported by sufficient evidence. We conclude that the juvenile court properly exercised jurisdiction over the matter and that substantial evidence supports the court's findings.

## I. *Jurisdiction of the Juvenile Court*

Father contends the juvenile court did not have the authority to “overrule” the family court’s custody and visitation orders and award custody of T. to both parents. We review questions of law de novo. (*In re M.C.* (2011) 199 Cal.App.4th 784, 804–805.)

Father’s argument ignores the “long-standing principle that dependency proceedings have primacy over family court proceedings when it comes to child custody matters.” (*In re Nicholas E.* (2015) 236 Cal.App.4th 458, 465; see also *In re Anne P.* (1988) 199 Cal.App.3d 183, 193 [“a superior court order awarding custody of minor children in a divorce action does not, in itself, deprive the juvenile court of jurisdiction to later litigate matters and issue orders affecting the custody of those children”]; *In re Desiree B.* (1992) 8 Cal.App.4th 286, 293.) As our sister court explained: “There is good reason for this principle: Family court proceedings are aimed at assessing ‘the best interests of the child as between two parents.’ [ Citation.] Dependency proceedings are not so narrow in focus, and invoke the state’s role as *parens patriae* in evaluating the best interest of the child, even if it means placement with someone other than the parents.” (*In re Nicholas E., supra*, 236 Cal.App.4th at p. 465, citing *In re Ryan K.* (2012) 207 Cal.App.4th 591, 599, fn. 10 [“[T]he juvenile court has a special responsibility to the child as *parens patriae* and must look at the totality of the child’s circumstances. . . . By empowering the juvenile court to issue custody . . . orders, the Legislature has expressed its belief that “the juvenile court is the appropriate place for these matters to be determined.””]; see also *In re Travis C.* (1991) 233 Cal.App.3d 492, 500.)

Once a dependency petition is filed, the juvenile court has exclusive jurisdiction over child custody and visitation. Section 304 provides: “While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court.” Similarly, rule 5.620(a) of the California Rules of Court states, “Once a petition has been filed in juvenile court alleging that a child is described by a subsection of section 300, and until the petition is dismissed or dependency is terminated, the juvenile court has sole and exclusive jurisdiction over matters relating to the custody of the child and visitation with the child.” (See also section 302, subdivision (c); Cal. Rules of Court, rule 5.510(c).)

Thus, by statute, a dependency proceeding takes precedence over any other case involving the custody of the minor(s) involved. (See *In re Alexander P.* (2016) 4 Cal.App.5th 475, 488; *A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, 1389; *In re Marriage of Seaman & Menjou* (1991) 1 Cal.App.4th 1489, 1498–1499 [“Juvenile court dependency orders supersede preexisting domestic relations custody orders and domestic relations courts may not enforce orders that conflict with juvenile court orders.”].)

Father’s contention that the juvenile court was estopped from making custody and visitation orders because the family law court had already heard evidence regarding the family’s substance abuse and domestic violence issues has been repeatedly rejected. (See *In re Desiree B.* (1992) 8 Cal.App.4th 286, 293 [“The litigation of custody issues in family court does not estop the juvenile court from reconsidering factually identical issues.”]; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470; *In re Travis C.*, *supra*, 233 Cal.App.3d at pp. 499, 502 [“the issues



before the family court and juvenile court can never be ‘identical,’ because the purposes of and parties to family law and juvenile dependency proceedings, while often overlapping, are not the same”].) Indeed, father does not cite a single dependency case in support of his arguments. His reliance on cases outside of the dependency context is therefore insufficient.

Similarly unsupported is father’s suggestion that the exclusive jurisdiction of juvenile court arises only where the children have been detained. He cites the first sentence of section 304, which provides for exclusive jurisdiction over custody and guardianship matters “[a]fter a petition has been filed pursuant to Section 311, and until the time that the petition is dismissed or dependency is terminated.”<sup>5</sup> We are not persuaded. The following sentence in section 304 states: “While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court.” The language elsewhere in the statute and in the Rules of Court is similarly unrestricted. (See, e.g., section 302, subdivision (c) [“When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court.”]; Cal. Rules of Court, rules 5.510(c) and 5.620(a).)

As such, it is “the statutory mandate of the juvenile court to assume jurisdiction whenever a minor comes within one of the ‘descriptions’ of . . . section 300. Under section 300 it makes no difference whether there is an ongoing dispute being litigated in the family law courts. Put simply, if the minor is being abused (as defined in subds. (a) through (j) of § 300), then he or she ‘is

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<sup>5</sup>Section 311 sets forth requirements for a petition if it is determined “that the minor shall be retained in custody.”

within the jurisdiction of the juvenile court.” (*In re Benjamin D.*, *supra*, 227 Cal.App.3d at pp. 1471-1472.) Thus, as long as A. and T. remained dependents as described in section 300, subdivision (b), the juvenile court properly exercised jurisdiction over the matter and was free to decide all issues of custody and visitation.<sup>6</sup>

## II. ***Jurisdictional Findings Under Section 300***

### A. *Justiciability*

DCFS argues that father’s appeal is moot because there are unchallenged jurisdictional findings against mother. “[A] jurisdictional finding good against one parent is good against both” because dependency jurisdiction attaches to the child, not the parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) “However, we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as a basis for the dispositional orders that are also challenged on appeal; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings; or (3) ‘could have other consequences for the [the appellant], beyond jurisdiction.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.)

Here, father contends the section 300, subdivision (b) finding could prejudice him in future proceedings because it classifies him as an “offending parent.” As such, the “court’s jurisdictional findings as to Father, if erroneous, could have severe and unfair consequences to Father in future family law or

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<sup>6</sup>To the extent father suggests in his reply brief that he had insufficient notice of the juvenile court proceedings, arguments raised for the first time in reply are untimely and may be disregarded. (See *Hernandez v. Vitamin Shoppe Industries, Inc.* (2009) 174 Cal.App.4th 1441, 1461, fn. 10.)

dependency proceedings.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.) We accordingly exercise our discretion in favor of considering father’s claims on the merits.

B. *Substantial evidence supports the court’s jurisdictional findings*

Father challenges the juvenile’s court’s jurisdictional finding that T. was at risk of harm because father failed to protect him from mother’s substance abuse. Father contends that the evidence showed that T. was safe in his care and “had been safe there for over six months.” We are not persuaded that the court abused its discretion in sustaining the jurisdictional allegations involving father.

We review the juvenile court’s jurisdictional findings and order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard, “[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Section 300, subdivision (b)(1) permits the assertion of jurisdiction where “the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child.” Where the child has not suffered actual harm, the evidence must establish “that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . .” (*In re A.G.* (2013) 220

Cal.App.4th 675, 683.)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing, the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child.” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384, citing *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) “The court may consider past events in deciding whether a child currently needs the court’s protection. A parent’s ‘[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re Kadence P., supra*, 241 Cal.App.4th at pp. 1383–1384; see also *In re S.O.* (2002) 103 Cal.App.4th 453, 461; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

Here, substantial evidence supports the juvenile court’s jurisdictional finding that “father knew of mother’s substance abuse and failed to take protective measures.” Statements by father and multiple relatives, as well as mother’s own admissions, established that mother had a longtime drinking problem and that she would become volatile and verbally abusive when drunk, without regard for whether the children were present. Indeed, father testified that he realized mother had a drinking problem a few years into their relationship. Further, in the past year, he had witnessed mother become verbally combative after drinking on occasions when the children were present. There was also evidence that father knew mother tried to drive drunk in the past with the children in the car. Father also found cocaine in mother’s purse in October 2018. Prior to that discovery, father claimed he did not have confirmation that mother was using drugs, but did have suspicions, based on

mother's behavior and reports from others. These suspicions led father to put a tracker on mother's car, because he was worried she might take the children somewhere unsafe.

In spite of these concerns regarding mother's behavior, father continued to allow her unlimited access to the children. For some time period, mother continued to watch T. while father was at work. Even after mother moved out of the home in approximately November 2018, she kept a key and could let herself in. Mother claimed that she visited the children every day and father acknowledged she did so "from time to time." There were also multiple reports of mother coming into the family home and passing out in one of the children's rooms, including on the day of the December 2018 incident. When father discovered her at 3:00 a.m. in T.'s room, he allowed her to stay and went back to bed himself. Further, father acknowledged waiting to seek assistance from authorities for months, despite his concerns regarding mother's behavior. Under these circumstances, substantial evidence supported the juvenile court's finding that father failed to protect T. despite his knowledge of mother's substance abuse.

Father contends that his progress by the time of adjudication established that there was no ongoing risk of harm to T. He notes that he was separated from mother with no plans to reconcile, he pursued a restraining order, and he was taking domestic violence and parenting classes. However, given his willingness to allow mother access to the children in the past, even after she had moved out of the home, as well as the recency of mother's sobriety and T.'s young age, we cannot conclude the juvenile court erred in finding that jurisdiction was necessary to monitor the family and protect T. from a risk of harm.

**DISPOSITION**

The jurisdictional orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.